

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In the Matter of all Licenses Held by Vone X. Moua and Mee Lee Moua, d/b/a Malina's Sports Bar & Grill for the Premises Located at 691 North Dale Street in Saint Paul; License ID No. 20010002326

**FINDINGS OF FACT, CONCLUSIONS,
RECOMMENDATION and
MEMORANDUM**

The above-entitled matter came on for hearing before Allan W. Klein, Hearing Officer, on December 2, 2004, in the Saint Paul City Hall. The hearing took less than half a day, and the record closed on December 2.

Virginia D. Palmer, Assistant Saint Paul City Attorney, 400 City Hall, 15 West Kellogg Boulevard, Saint Paul, MN 55102 appeared on behalf of the Office of License, Inspections and Environmental Protection.

Vone X. Moua and Mee Lee Moua appeared on their own behalf, without benefit of counsel.

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after a review of the record. The City Council may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendation herein. Under Section 310.05(c-1) of the City's Legislative Code, the City Council will provide Malina's an opportunity to present oral or written argument to it before it takes final action. Malina's should contact the Saint Paul City Clerk to ascertain the procedure for presenting argument to the Council.

STATEMENT OF ISSUE

Should disciplinary action be taken against the Moua's licenses because they failed to take reasonable and adequate steps to prevent persons from leaving the premises with an alcoholic beverage?

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Malina's Sports Bar & Grill is located at 691 North Dale Street, between Van Buren and Minnehaha. It is on the west side of Dale Street, south of Minnehaha and north of Van Buren.

2. There are two doors into and out of the bar. Both face onto Dale Street. The main door is on the north end of the building, facing Dale Street, while the secondary door is on the south end of the building, also facing Dale Street. A person driving south on Dale Street in an automobile would be coming downhill from an overpass as they would approach the corner (which has a stop light) of Minnehaha and Dale. Malina's is on the southwest corner of that intersection, and persons using the doors of Malina's are very visible to cars traveling south on Dale Street.

3. Early on the morning of Sunday, July 4, 2004, Saint Paul Police Officers Robert Vetsch and Thomas Tanghe were proceeding south on Dale Street when they observed roughly 15 people congregated around the south door of Malina's. These people appeared to have just come out of Malina's, as more were still coming out of the south door. The officers observed one person coming out of the south door was carrying a bottle. They pulled over and parked along Dale Street and got out of the squad car. They determined that the individual carrying the bottle was Ger Ner, who lives in Minneapolis. They told Ner that it was a violation of a city ordinance to be consuming alcohol on the sidewalk. Ner replied that he didn't know he was not suppose to do that. They told him to return the beer bottle to one of the two bouncers who were just inside the south door. Then one of them (Officer Vetsch) walked up to the bouncer and reminded him that he could not let alcoholic beverages leave the bar. The bouncer acknowledged that. The officers decided just to give Ner a warning, but they decided to write an incident report for the bar and forwarded it to the Department of Licenses, Inspections and Environmental Protection. A report was written that night, and is in the record as Exhibit 2.

4. The report ended up on the desk of Christine Rozek, the Deputy Director of LIEP. She reviewed Malina's computerized record. She learned that Malina's holds an on-sale-two a.m. closing-Sunday liquor license, as well as various entertainment and restaurant licenses.^[1] Rozek also looked for a history of police calls and a pattern of violations, but found no prior violations. She determined that Malina's was not a "problem establishment."

5. Rozek was aware that the location at 691 North Dale had been a problem in the past, when it was under different ownership. It had previously been known as the "Bourbon Bar," which was described as a "blight on the neighborhood."^[2] Under the prior ownership, the Bourbon Bar had a history of fights and catered primarily to a motorcycle crowd that was not well liked by many of the neighbors. When Moua was seeking to buy the bar, he met with the District 7 Planning Council, and agreed to a lot of special conditions which they requested prior to recommending his licensure. Tait

Danielson, the lead community organizer, stated that the bar was now a real benefit to the neighborhood, it had become a community meeting spot, and that Moua had dealt well with his neighbors. He said the Planning Council was “very grateful” for what Moua had done to improve Malina’s.

6. Moua and his wife are both licensed social workers, and they maintain a private practice in offices located above the bar. They have assisted numerous Hmong (and other nationality) new arrivals in adjusting to their new surroundings in the city.

7. Rozek decided to refer the July 4 incident to the City Attorney’s office. On October 25, 2004, the City Attorney’s office issued a Notice of Violation, indicating that LEIP had recommended adverse action against the licenses and a \$500 fine. The Notice contained the following language:

On July 4, 2004 at approximately 1:30 a.m. officers were on tour near the area of Malina’s Sports Bar when they observed a crowd of about 15 people on the sidewalk, one of whom was holding a bottle of beer. Officers spoke to the individual, who admitted that he had purchased the beer inside the bar and had walked outside with it. Despite the presence of bouncers at the door, nobody attempted to stop him from leaving with the beer. Saint Paul Legislative Code § 409.08 (15) states that “each on-sale licensee shall have the responsibility of taking reasonable and adequate steps to prevent persons from leaving the license premises with a bottle, can or glass containing any alcoholic beverage, and the failure to do so may subject such licensee to adverse action against his or her license.”^[3]

8. On October 29, 2004, Vone Moua submitted a letter to the City Attorney requesting a hearing.^[4] On November 12, 2004, a Notice of Administrative Hearing was issued, setting the hearing for December 2.^[5] The hearing did go forward on December 2, and lasted for half a day.

9. The weekend closest to July 4 is the time of the Hmong Soccer Tournament in Saint Paul. This tournament draws “thousands and thousands” of people from around the country.^[6] The tournament is held in Como Park, and Malina’s Sports Bar is a focus of activity for the event. Vone Moua expected a large crowd that weekend, and prepared for it by hiring extra bouncers and taking other steps in an attempt to maximize the safety of his patrons. The Saint Paul Police Department was also aware of the event, and directed officers to pay particular attention to five or six Hmong-oriented bars in the City. Officers Vetsch and Tanghe had been directed to pay particular attention to Malina’s because of the large number of people expected to be there.

10. Officers Tanghe and Vetsch did, in fact, pay particular attention to Malina’s that weekend. They went by it several times on Friday July 2, Saturday July 3, and Sunday July 4. They stopped at least once on July 2 and at least once on July 3 to deal

with various matters, but wrote no tickets and made no arrests. But the bar was very busy during that period and there were many, many people there.

11. In preparation for the crowds expected for the soccer tournament, Moua hired extra bouncers. At the time of the incident early in the morning of July 4, he had two bouncers at the south door and two bouncers at the north door. At each door, the two bouncers were facing each other. It was a warm night, and there was no reason for anyone to be wearing a bulky jacket or other clothing that would allow them to hide a bottle. When Officers Vetsch and Tanghe saw Ner walk out with a bottle in his hand, they decided that the bouncers must have knowingly let him go out and failed to stop him. That is why they wrote up the report.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The City Council of the City of Saint Paul and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.55 and § 310.05 of the City's Legislative Code.

2. The City is given proper Notice of the Hearing in this matter, and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 409.08 (15) of the City's Legislative Code provides that "each on-sale licensee shall have the responsibility of taking reasonable and adequate steps to prevent persons from leaving the licensed premises with a bottle, can or glass containing any alcoholic beverage...."

4. Putting two bouncers at each door constitutes "reasonable and adequate steps" to prevent alcoholic beverages from being taken out of the establishment. The incident with Ger Ner was an isolated one, and it is insufficient to demonstrate that Moua failed to take "reasonable and adequate steps." He did not violate the Legislative Code.

Based upon the foregoing Conclusions, the Hearing Officer makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: That the Saint Paul City Council not take any adverse action against the licenses held by Vone X. Moua and Mee Lee Moua d/b/a Malina's Sports Bar & Grill in connection with this incident, but that the incident be recorded for use in any future proceedings concerning similar violations.

Dated this 4th day of January, 2005.

S/ Allan W. Klein _____
ALLAN W. KLEIN
Administrative Law Judge

Reported: Taped

No transcript prepared

MEMORANDUM

The evidence clearly supports the allegation that a patron did walk out of Malina's carrying a bottle of beer early in the morning of July 4. The incident did occur. But what the Code requires is that the Licensee take "reasonable and adequate steps" to prevent that from happening. The question of whether or not the Licensee has violated the Code focuses on whether or not the Licensee took "reasonable and adequate steps." Under the circumstances of the Hmong Soccer Tournament and the large crowds that were at Malina's that weekend, the fact that there was only this one incident is remarkable. As Tait Danielson put it, "We [District 7 Planning Council Staff] were very pleased that this was all that happened. We say 'Bravo!'"

Based on all of the facts, the Administrative Law Judge does not believe that the Mouas failed to take reasonable and adequate steps to prevent the incident from occurring, and thus, no discipline is warranted.

A.W.K.

[1] Exhibit 1.

[2] This description came from Tait Danielson, the lead community organizer for District 7.

[3] Exhibit 3.

[4] Exhibit 4.

[5] Exhibit 5.

[6] Testimony of Tait Danielson.